

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Patrick Lynn, Police Chief 954-693-8320

PREPARED BY: Daniel J. Stallone, Esq., Code Compliance Official

SUBJECT: Resolution

AFFECTED DISTRICT: 4

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: MITIGATION - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF A CODE COMPLIANCE LIEN IN CASE NO. 07-1368 FROM \$70,500.00 IN AMOUNT TO \$18,000.00; AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: The Code Compliance Division initiated a code compliance case on October 15, 2007, related to the failure of the property owner to adhere to code sections 9-51(b) Overgrowth, 12-33(A)(8)(d) Self-closing latch at gate around swimming pool, and 12-33(U) Nuisance related to pool security and sanitation. The Town of Davie Code Compliance Division has determined that the violations of the above referenced code sections have been corrected and the property is currently in compliance

On April 8, 2008 the Town Special Magistrate issued an Order Imposing Municipal Code Enforcement Lien and Administrative fine in the amount of \$70,500.00 for 141 days of non compliance for the above three (3) violations. On October 14, 2008 at the Special Magistrate hearing the petitioner appeared before the Magistrate and requested mitigation. The Special Magistrate considered the respondent's information about the property's current status of compliance with town codes; also, the impending sale of the subject property to a new buyer, and upon an evaluation of these factors, Special Magistrate Meah Tell recommended that the lien be reduced to the amount proffered by the respondent which equals \$18,000.00 as a reasonable mitigation amount. The Special Magistrate's advisory opinion is based upon her consideration of the facts and testimony presented at the mitigation hearing and which may be considered by the town council, who shall either reject the mitigation request or mitigate the lien to an amount determined by the town council in its sole discretion.

PREVIOUS ACTIONS: None

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): The Code Compliance Division recommends the application of the mitigation guidelines for an amount equal to \$44,015.98; the Town Code Compliance Special Magistrate has issued an advisory opinion recommending the approval of a mitigation amount equal to \$18,000.00, which was the amount recommended by the respondent and which the Special Magistrate believes to most favor the pending sale of the property to a new owner.

Attachment(s): Resolution, Mitigation Worksheet, Mitigation Application Review Form, Mitigation Request Summary, Mitigation Inspection Report, Mitigation Guidelines, Special Magistrate Advisory Opinion.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF CODE COMPLIANCE LIENS IN CASE NO. 07-1368 FROM \$70,500.00 IN AMOUNT TO \$18,000.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Bank of New York have requested a mitigation of a Code Compliance lien from \$70,500.00; and

WHEREAS, the Town of Davie Code Compliance Division has determined that the violation of Town Code Sections 9-51(b), 12-33(A)(8)(d) and 12-33(U)) were corrected; and

WHEREAS, the Town of Davie Code Compliance Division Special Magistrate has proscribed a mitigation amount equal to \$18,000.00; and

WHEREAS, Bank of New York and the Town of Davie Code Compliance Division are agreeable to the mitigation of the Code Compliance lien.

WHEREAS, the Town Council is agreeable to such mitigation of the Code Compliance lien.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the certain Code Compliance lien arising out of Case No. 07-1368 in the amount of \$70,500.00 against Bank of New York, is hereby mitigated in amount to \$18,000.00.

SECTION 2. That this mitigated amount of \$18,000.00 be paid to the Town within 45 days of the enactment of this Resolution. Should this amount of \$18,000.00 not be paid within the specified time the lien shall revert to the original amount of \$70,500.00.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2008

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2008

**TOWN OF DAVIE CODE COMPLIANCE
MITIGATION WORKSHEET
CASE #07-1368**

Respondent(s): Bank of New York

Address: 15281 SW 31 Court
Davie, FL 33331

Fine/Lien Amount: \$70,500.00

Mitigation Recommendation:
(as per approved mitigation guidelines)

a) 25 % of \$70,500.00	=	\$ 17,625.00
b) 36% of \$70,500.00		
141 days of non-compliance	=	\$ 25,380.00
(12% per 60 day noncompliance period or any part thereof)		
c) Mitigation Base Fee	=	\$ 1,010.98
(Town costs incurred by Code Compliance)		
Total	=	\$ 44,015.98

**TOWN OF DAVIS
CODE COMPLIANCE DIVISION
MITIGATION APPLICATION REVIEW FORM**

SECTION 1: (To be completed by Code Compliance Supervisor)

1. Name of Respondent(s)/Applicant(s): Bank of New York
2. Case Number: Code Compliance Case no. 07-1368
3. Total amount of Code Compliance Lien(s)/Administrative Fine(s): \$70,500.00
4. Is Respondent(s)/Applicant(s) in compliance with applicable Town Code Sections? X Yes No
(If the answer to Question 4 is no, do not complete Question 5, as compliance is a prerequisite to further processing.)
5. Mitigation amount recommended by the Town Council approved guidelines: \$44,015.98

SECTION 2: (To be completed by Respondent(s)/Applicant(s))

1. Please state any and all reasons why the Town should agree to mitigate the Code Compliance Lien(s)/Administrative Fines:

FINE COURT ORDERED IN APRIL 2008
PROPERTY MADE COMPLIANT JUNE 2008
PER CITY GUIDELINE 25% OF FINE
 Signature: Shirley Conway Date: 10/21/08

2. Please indicate the amount which you request the Code Compliance Lien(s) be mitigated to: \$18,000.00

NOTE: The Code Compliance Division will submit your request to the Town Council to either accept or deny your mitigation amount. If your request is less than the mitigation guideline amount, the Code Compliance Division Compliance Division shall automatically make a recommendation to deny your mitigation request. In the event you do not agree with the mitigation guideline amount set forth in Section 1 above, the matter will be referred to a Special Magistrate who will make a recommendation to the Town Council. The decision to grant or deny the request for mitigation will be made by the Town Council. In the event the Town approves your mitigation request, you must pay the mitigated amount to the Town of Davis within 45 days of Town Council approval or the Code Compliance Lien(s)/Administrative Fine(s) will remain in effect in the original amount.

SECTION 3: (To be authorized by Department Director)

The Code Compliance Division hereby submits the request made by the Respondent/Applicant, in Section 2, to mitigate the Code Compliance Lien(s)/Administrative Fine(s) in Case Number 07-1368 from a total of \$70,500.00 to the amount requested by the Respondent/Applicant which is \$18,000.00 for consideration by the Town Council.

Theresa O'Sullivan
Code Compliance Official

10-21-08
Date

WJD
Department Director

10/22/08
Date

MITIGATION REQUEST SUMMARY

DATE: October 15, 2008

NAME: Bank of New York

ADDRESS: 15281 SW 31 Court
Davie, FL 33331

CASE: 07-1368

SUMMARY:

Date respondent cited: October 15, 2007

Date of Final Order: November 12, 2007

Non-Compliance Hearing(s): April 8, 2008

Fine/Lien(s) Imposed: \$
70,500.00

Department Guideline recommended mitigation amount: \$
44,015.98

Amount the respondent desires to pay: \$
18,000.00

The property owner was cited for the following violations of the Town of Davie Code:

9-51(b) Overgrowth
12-33(A)(8)(d) Self Closing Locks Required
12-33(U) Health Safety and Welfare

The mitigated amount will cover the Town expenses and the recommended mitigated amount of \$18,000.00 should be considered and approved by the Town Council and the respondent given 45 days to pay the mitigated amount.

DANIEL J. STALLONE
CODE COMPLIANCE OFFICIAL



TOWN OF DAVIE
POLICE DEPARTMENT
CODE COMPLIANCE DIVISION
1230 Nob Hill Road
Davie, Florida 33328

MITIGATION INSPECTION REPORT

CASE NO. 07-13168

DATE FINAL ORDER ISSUED: 11/12/07 INSPECTION DATE 9/25/08

RESPONDENT(S) Bank of New York

PROPERTY ADDRESS 15781 SW 31 CT

VIOLATIONS OP COMPLIED NOT COMPLIED (check one)

MITIGATION HEARING REQUEST (DATE) 10/14/08

LIST VIOLATIONS NOT COMPLIED: _____

1. _____

2. _____

3. _____

4. _____

5. _____

Comments: _____

INSPECTOR SIGNATURE OP Phillips DATE 10/13/08

DJS 10/08

<u>FINE AMOUNT</u>	<u>MITIGATION GUIDELINES</u>
Fine to \$10,000	7.5% of the amount plus an additional 5% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$10,000 - \$20,000	10.0% of the amount plus an additional 6% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$20,001 - \$30,000	12.5% of the amount plus an additional 7% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$30,001 - \$40,000	15.0% of the amount plus an additional 8% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$40,001 - \$50,000	17.5% of the amount plus an additional 9% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$50,001 - \$60,000	20.0% of the amount plus an additional 10% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$60,001 - \$70,000	22.5% of the amount plus an additional 11% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$70,001 - \$80,000	25.0% of the amount plus an additional 12% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$80,001 - \$90,000	27.5% of the amount plus an additional 13% For each sixty (60) days of violation plus actual costs incurred by the Town.
\$90,001 - \$100,000	30.0% of the amount plus an additional 14% For each sixty (60) days of violation plus actual costs incurred by the Town.
Over \$100,000	35.0% of the amount plus an additional 15% For each sixty (60) days of violation plus actual costs incurred by the Town.

This schedule would be utilized for first time violators and repeat violators.

MITIGATION BASE FEE (COST OF CASE ADMINISTRATION AND DEVELOPMENT) SHALL BE ADDED TO THE TOTAL DERIVED FROM APPLICATION OF ABOVE GUIDELINES. THE MITIGATION BASE FEE IS BASED UPON THE EXPENSES INCURRED BY TOWN EMPLOYEES AND ALL ACCOMPANYING COSTS.
MITIGATION BASE FEE* \$ 1010.98

*Subject to revision as per current staff salaries.

Meah Rothman Tell, Esq.
Meah Rothman Tell, P.A.
11081 N.W. 12 Drive
Coral Springs, Florida 33071
Tel: (954) 733-5000
Fax: (954) 733-2320

Florida Supreme Court Certified	J.D./MBA 1976
Circuit Civil and Family Mediator	LL.M. Taxation 2005

October 14, 2008

Daniel Stallone, Esq.
Supervisor
Code Enforcement
Town of Davie
1230 South Nob Hill Road
Davie, Florida

Re: Case No. 07-1368 Bank of New York, The Bank of
New York, Inc.
Property Address: 15281 S.W. 31st Court
Davie, Florida

REQUEST FOR MITIGATION

The undersigned, Special Magistrate for Code Enforcement,
conducted a mitigation hearing in this case on October 14, 2008.

Present at this hearing were Mr. Chris Tello, realtor and
Property manager, and Mr. Joseph Shadmi, the prospective purchaser of the
Property, as well as the Code Enforcement officers.

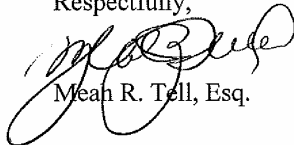
It appears that the Bank of New York acquired this property
in a foreclosure sale and that their loan was serviced by Countrywide
Home Loans, Inc. Unfortunately, no representative of the Respondent
or Countrywide Home Loans, Inc. ever appeared at any hearings in
this matter.

Ultimately, Countrywide Home Loans, Inc. referred this property to Mr. Tello for maintenance and sale. Immediately upon being retained Mr. Tello endeavored to correct all code violations. Due to a problem with the pool filters, he was delayed in correcting the pool violation for approximately one month. All other violations were corrected immediately and the property has continued to remain in compliance. In excess of a thousand dollars has been spent to keep the property in compliance.

There is a pending sale of the property to Mr. Joseph Shadmi which has been placed in jeopardy by the lien of \$70,500.00 on this property. The request to mitigate this lien to \$18,000.00 should be granted in order to facilitate the sale. This mitigated amount should cover all administrative costs of the Town of Davie in this matter and enable the sale of the property to proceed forward. It is in the best interest of the Town of Davie to enable lenders at this time of crisis in our nation's economy to be able to move forward and sell properties which they have involuntarily acquired by foreclosure. Mr. Shadmi took the time and energy to attend the hearing and it is in the best interest of the Town of Davie to have this gentleman and his family occupy and maintain the property. The testimony of the realtor is that Mr. Shadmi has also assisted with the maintenance of the property.

The mitigation request of \$18,000.00 should be granted.

Respectfully,

A handwritten signature in black ink, appearing to read 'Meah R. Tell', is written over the typed name.

Meah R. Tell, Esq.